

HON. BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,)	
)	No. 2:23-cv-01371-BJR
Plaintiff,)	
v.)	CONSENT DECREE
)	
THE TRUSS COMPANY & BUILDING)	
SUPPLY LLC,)	
)	
Defendant.)	
)	

I. STIPULATIONS

WHEREAS, Plaintiff Puget Soundkeeper Alliance filed a complaint on September 5, 2023 (Dkt. 1) against defendant The Truss Company and Building Supply, L.L.C. (“Truss Company”) alleging violations of the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, in relation to the Truss Company’s truss manufacturing facility at or about 15599 Ashten Rd., Burlington, WA 98233 (the “Facility”), and any contiguous or adjacent properties owned or operated by the Truss Company, and seeking declaratory and injunctive relief, civil penalties, and attorneys’ fees and costs.

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SMITH & LOWNEY PLLC
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

WHEREAS, Puget Soundkeeper Alliance and the Truss Company (the “Parties”) agree that settlement of these matters is in the best interest of the Parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action.

WHEREAS, the Parties stipulate to the entry of this Consent Decree without trial, adjudication, or admission of any issues of fact or law regarding Puget Soundkeeper Alliance’s claims or allegations set forth in its complaint and its sixty-day notice.

DATED this 18th day of November, 2024

THE TRUSS COMPANY AND BUILDING SUPPLY, L.L.C. PUGET SOUNDKEEPER ALLIANCE

By _____
Roger Helgeson
President

By _____
Sean Dixon
Executive Director

II. ORDER AND DECREE

THIS MATTER came before the Court upon the Parties’ Joint Motion for Entry of Consent Decree and the foregoing Stipulations of the Parties. Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the Parties and subject matter of this action.
2. Each signatory for the Parties certifies for that Party that he or she is authorized to enter into the agreement set forth herein and to legally bind the Party or Parties, their successors in interest, and assigns.
3. This Consent Decree applies to and binds the Parties and their successors and assigns.

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2 4. This Consent Decree and any injunctive relief ordered within applies to the Truss
3 Company's operation and oversight of the Facility.

4 5. This Consent Decree is a full and complete settlement and release of all the claims
5 in Puget Soundkeeper Alliance's complaint and the preceding sixty-day notice letter, and all other
6 claims known or unknown that exist as of the date of entry of the Consent Decree that could be
7 asserted under the Clean Water Act, 33 U.S.C. §§ 1251-1387, arising from operation of the Facility.
8 Upon termination of this Consent Decree, these claims are released and dismissed with prejudice.
9 The Truss Company's payment of attorney's fees and litigation costs set forth in Paragraph 9 of the
10 Consent Decree will be in full and complete satisfaction of any claims Puget Soundkeeper Alliance
11 and Smith & Lowney, PLLC have or may have, either legal or equitable, known or unknown, and
12 of any kind or nature whatsoever, for fees, expenses, and costs incurred in relation to this lawsuit.
13 Enforcement of this Consent Decree is Puget Soundkeeper Alliance's exclusive remedy for any
14 violation of its terms.

15 6. This Consent Decree is a settlement of disputed facts and law. It is not an admission
16 or adjudication regarding any allegations by Puget Soundkeeper Alliance in this case or of any fact
17 or conclusion of law related to those allegations, nor evidence of any wrongdoing or misconduct
18 on the part of the Truss Company or its members, employees, agents, affiliates, contractors,
19 customers, or other third parties. The Truss Company agrees to the terms and conditions identified
20 in Paragraphs 7-9 in full and complete satisfaction of all the claims covered by this Consent Decree:

21 7. Upon entry of the Consent Decree, the Truss Company will implement the following
22 injunctive relief:
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2 a. The Truss Company will adhere to the terms and conditions of its Industrial
3 Stormwater General Permit (“ISGP”), as may be modified, renewed, and/or amended by
4 the Washington State Department of Ecology (“Ecology”), and will implement the best
5 management practices (“BMPs”) provided in the Facility’s Stormwater Pollution
6 Prevention Plan (“SWPPP”).

7 b. The Truss Company will, on a quarterly basis, provide the following to
8 Puget Soundkeeper Alliance: (i) electronic copies of all communications or documents
9 provided to and/or received from Ecology related to the ISGP, (ii) written progress reports
10 documenting the progress of installation of the stormwater treatment system documented
11 in Ecology’s September 17, 2024 approval letter (the “Stormwater Treatment System”),
12 and/or any amendments to the Facility’s SWPPP.

13 c. Within seven (7) days of entry of the Consent Decree, the Truss Company
14 will provide funding for Puget Soundkeeper Alliance to monitor the Truss Company’s
15 compliance with the terms of the Consent Decree in the amount of \$2,000. This funding is
16 separate from and in addition to the payments required under Paragraphs 9–10, below.
17 Such payment shall be made in accordance with the instruction provided by Paragraph 10,
18 below.

19 d. Within thirty (30) days of entry of the Consent Decree, the Truss Company
20 will commence use a high-capacity, regenerative vacuum sweeper to sweep all outdoor,
21 exposed paved surfaces at the Facility at least weekly. The Truss Company will also
22 maintain a schedule for reasonable rotations of raw materials, finished products, and
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2 mobile equipment to ensure all areas beneath materials and equipment are swept with the
3 vacuum sweeper at least monthly. The Truss Company will add this schedule to its SWPPP
4 for the Facility.

5 e. Within thirty (30) days of entry of the Consent Decree, the Truss Company
6 will: (1) install a curb along the north side of the Facility to prevent runoff off-site to the
7 north, (2) install a curb at the northeast corner of the Facility to prevent runoff down the
8 driveway exit, and to prevent any Facility stormwater from reaching the off-site catch basin
9 in this corner, and (3) commence monthly inspections of the off-site catch basin near the
10 northeast corner of the Facility, which will include the removal of any observed sawdust
11 or other waste materials attributable to its operations.

12 f. By September 30, 2025, the Truss Company will install and begin operating
13 the Stormwater Treatment System. Thereafter, the Truss Company will maintain the
14 Stormwater Treatment System and replace media as appropriate to prevent any
15 exceedances of ISGP benchmarks.

16 g. Beginning one (1) week after entry of the Consent Decree, and lasting until
17 the Stormwater Treatment System is operating, the Truss Company will install and
18 maintain media filter inserts in all Facility catch basins. The media used for the inserts will
19 be designed to target particulates and metallic pollutant capture, and the Truss Company
20 will maintain them per the manufacturer's specifications.

21 h. Following installation of the Stormwater Treatment System, the Truss
22 Company will notify Puget Soundkeeper Alliance. Puget Soundkeeper Alliance will then
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2 be permitted, at its sole cost and expense, to visually inspect the new treatment system
3 subject to coordination with the Truss Company, which will be reasonably accommodated.

4 8. Within seven (7) days of executing the proposed Consent Decree, Puget
5 Soundkeeper Alliance will dismiss its appeal in the matter of *Puget Soundkeeper Alliance v.*
6 *Department of Ecology*, PCHB No. 24-056 with prejudice and without a separate award of fees or
7 costs.

8 9. Payment to Environmentally Beneficial Projects: Within seven (7) days of entry of
9 this Consent Decree, or by January 31, 2025 (whichever is later), the Truss Company will pay
10 \$476,000 (FOUR HUNDRED AND SEVENTY SIX THOUSAND DOLLARS) to be distributed
11 as follows to the specific recipients for use solely for projects that benefit water quality in the
12 vicinity of Padilla Bay in Puget Sound, as described in Exhibit 1 and Exhibit 2 to this Consent
13 Decree.

14 a. \$301,000 (THREE HUNDRED AND ONE THOUSAND DOLLARS) will
15 be made payable to the Rose Foundation for Communities & the Environment's Puget
16 Sound Stewardship and Mitigation Fund. The check will be made to the order of Rose
17 Foundation for Communities and the Environment, Attention: Jodene Isaacs, 201 4th
18 Street, Suite 102, Oakland, California 94707. Payment will include the following
19 references in a cover letter or on the check: "Consent Decree, Puget Soundkeeper Alliance
20 v. The Truss Company and Building Supply, L.L.C., W.D. Wash. No. 2:23-cv-01371-
21 BJR."

22 b. \$175,000 (ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS)

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2 will be made payable to Ducks Unlimited, Attention Jeff McCreary, P.O. Box 7415, Ban
3 Franklin Station, Washington, D.C. 2044-7415. Payment will include the following
4 references in a cover letter or on the check: "Consent Decree, Puget Soundkeeper Alliance
5 v. The Truss Company and Building Supply, L.L.C., W.D. Wash. No. 2:23-cv-01371-
6 BJR."

7 c. The Truss Company will send a copy of the checks and cover letters, if any,
8 to Puget Soundkeeper Alliance and its counsel, pursuant to the notice provisions in
9 Paragraph 19.

10 10. Within seven (7) days of entry of this Consent Decree, the Truss Company will pay
11 \$103,500 (ONE HUNDRED AND THREE THOUSAND, FIVE HUNDRED DOLLARS) to
12 Puget Soundkeeper Alliance to cover Puget Soundkeeper Alliance's litigation fees, expenses, and
13 costs (including reasonable attorneys and expert witness fees) by check payable and mailed to
14 Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, attn: Marc Zemel.

15 11. A force majeure event is any event outside the reasonable control of the Truss
16 Company that causes a delay in performing tasks required by this Consent Decree that cannot be
17 cured by due diligence. Delay in performance of a task required by this Consent Decree caused by
18 a force majeure event is not a failure to comply with the terms of this Consent Decree, provided
19 that the Truss Company timely notifies Puget Soundkeeper Alliance of the event, the steps that the
20 Truss Company will take to perform the task, the projected time that will be needed to complete
21 the task, and the measures that have been taken or will be taken to prevent or minimize any impacts
22 to stormwater quality resulting from delay in completing the task.
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12. The Truss Company will notify Puget Soundkeeper Alliance of the occurrence of a force majeure event as soon as reasonably possible but, in any case, no later than fifteen (15) days after the Truss Company becomes aware of the event. In such event, the time for performance of the task will be extended for a reasonable period of time following the force majeure event.

By way of example and not limitation, force majeure events include

- a. Acts of God, war, insurrection, or civil disturbance;
- b. Earthquakes, landslides, fire, floods;
- c. Actions or inactions of third parties over which the Truss Company has no or limited control;
- e. Restraint by court order or order of public authority;
- f. Strikes;
- g. Unusually adverse weather conditions;
- h. Any permit or other approval sought by the Truss Company from a government authority to implement any of the actions required by this Consent Decree where such approval is not granted or is delayed, and where the Truss Company has timely and in good faith sought the permit or approval;
- i. Pandemic; and
- j. Litigation, arbitration, or mediation that causes delay.

13. This Court retains jurisdiction over this matter while this Consent Decree remains in force. While this Consent Decree remains in force, this case may be reopened without filing fees

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2 so that the Parties may apply to the Court for any further order that may be necessary to enforce
3 compliance with this Consent Decree or to resolve any dispute regarding the terms or conditions of
4 this Consent Decree. In the event of a dispute regarding implementation of, or compliance with,
5 this Consent Decree, the Parties must first attempt to resolve the dispute by meeting to discuss the
6 dispute and any suggested measures for resolving the dispute. Such a meeting will be held as soon
7 as practical but must be held within thirty (30) days after notice of a request for such a meeting to
8 the other Party and its counsel of record. If no resolution is reached at that meeting or within thirty
9 (30) days of the Notice, either Party may file a motion with this Court to resolve the dispute. In the
10 event that the dispute is put before the Court for resolution, the prevailing or substantially prevailing
11 party will be entitled to its reasonable attorneys' fees and litigation costs.

12 14. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent judgment
13 can be entered in a Clean Water Act suit in which the United States is not a party prior to forty-five
14 (45) days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
15 General and the Administrator of the U.S. Environmental Protection Agency ("EPA"). Therefore,
16 upon the filing of this Consent Decree by the parties, Puget Soundkeeper Alliance will serve copies
17 of it upon the Administrator of the U.S. EPA and the U.S. Attorney General.

18 15. This Consent Decree will take effect upon entry by this Court. The Consent Decree
19 terminates upon the later of: (a) three (3) years after the date of entry, or (b) completion of the tasks
20 described in Paragraph 7(c) and Paragraph 7(e)(1)-(2) of this Consent Decree and installation of
21 the Stormwater Treatment System.

22 16. Both Parties have participated in drafting this Consent Decree.

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2 17. This Consent Decree constitutes the entire agreement between the Parties. There are
3 no other or further agreements, either written or verbal. This Consent Decree may be modified only
4 upon a writing signed by both Parties and the approval of the Court.

5 18. If for any reason the Court should decline to approve this Consent Decree in the
6 form presented, this Consent Decree is voidable at the discretion of either Party. The Parties agree
7 to continue negotiations in good faith to cure any objection raised by the Court to entry of this
8 Consent Decree.

9 19. Notifications required by this Consent Decree must be provided via email. For a
10 notice or other communication regarding this Consent Decree to be valid, it must be sent to the
11 receiving Party at the one or more email addresses listed below or to any other address designated
12 by the receiving Party in a notice in accordance with this paragraph.

13 **If to Puget Soundkeeper Alliance:**

14 Emily Gonzalez
15 Kelsey Furman
16 Puget Soundkeeper Alliance
emily@pugetsoundkeeper.org
kelsey@pugetsoundkeeper.org

17 **And to:**

18 Marc Zemel
19 Evelyn Mailander
20 Smith & Lowney PLLC
marc@smithandlowney.com
evelyn@smithandlowney.com

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If to the Truss Company:

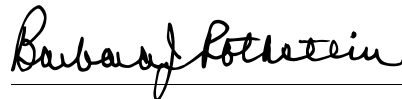
Roger Helgeson
roger.helgeson@thetrussco.com

And to:

Matthew Stock
Hillis Clark Martin & Peterson P.S.
matthew.stock@hcmp.com

Any party identified in the notice provisions above may affect a change in the notice address by providing a notice complying with these provisions to all other parties listed. A notice or other communication regarding this Consent Decree will be effective the day it is transmitted. An email is effective the day it is sent so long as it is sent by 5 pm and on a business day, or else it is effective the following business day.

DATED this 31st day of January 2025.



HON. BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

Presented by:

HILLIS CLARK MARTIN & PETERSON, P.S.

By s/ Matthew Stock
Matthew Stock, WSBA #40223
Attorneys for The Truss Company and Building Supply, L.L.C.

SMITH & LOWNEY, PLLC

By s/Marc Zemel
Marc Zemel, WSBA #44325
Attorneys for Plaintiff Puget Soundkeeper Alliance

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